

REDACTED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FERNANDA GARBER, MARC LERNER,)	
DEREK RASMUSSEN, ROBERT SILVER,)	
GARRETT TRAUB, and PETER HERMAN,)	
representing themselves and all others similarly)	
situated,)	12-cv-3704 (SAS)
)	
Plaintiffs,)	ECF Case
)	
v.)	
)	<u>Electronically Filed</u>
OFFICE OF THE COMMISSIONER)	
OF BASEBALL, et al.,)	
)	
Defendants.)	
)	

DECLARATION OF ROBERT BOWMAN

I, ROBERT BOWMAN, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the CEO and President of MLB Advanced Media, L.P. ("MLBAM"), a position I have held since 2000, since the inception of MLBAM. I submit this declaration in support of the motion for summary judgment by the Office of the Commissioner of Baseball (doing business as Major League Baseball ("MLB")) and the other MLB entities and clubs named as defendants in this lawsuit. The facts stated herein are based on my personal knowledge as well as my familiarity with MLBAM's history, business records, and procedures, and I believe them to be undisputed.

MLBAM

2. MLBAM is the vehicle designed by MLB and the clubs to, among other things, deliver live telecasts of MLB club games to fans through streaming via interactive media, including via the Internet.

3. The MLB entities, including the thirty Major League Clubs and MLBAM, entered into the Major League Baseball Interactive Media Rights Agreement ("IMRA"), effective January 20, 2000. IMRA provides, among other things, that all clubs grant MLBAM, on an exclusive and worldwide basis, their interactive media rights.

4. Since its inception, a goal of MLBAM has been to increase output to MLB fans through the use of developing technology and to do so without undermining MLB's existing local and national video distribution framework. Importantly, in addition to providing live video of games through MLB.TV and otherwise (discussed below), MLBAM offers fans the most complete baseball information and interactivity on the web and mobile and other Internet-connected devices, including up-to-date statistics, game previews and summaries, extensive historical information, online ticket sales, baseball merchandise, authenticated memorabilia and collectibles, fantasy games, highlights, live and archived audio broadcasts of every game, Gameday animated pitch-by-pitch application, around-the-clock hosted and specialty video

programming and complete blogging capabilities. Each day, millions of fans use our sites, apps and other products, in which most content is available for free. In short, MLBAM comprehensively and equally serves all fans of all clubs, whether you are a solitary Brewers fan in Maine or one of the many Yankee fans across the country.

5. Under IMRA, MLBAM is authorized to stream all MLB games produced by a club's local telecast partner (each, a "Local Game") live outside each applicable club's Home Television Territory ("HTT"). MLBAM may also stream Local Games live within the HTTs of consenting clubs. Notably, IMRA does not prohibit streaming of any Local Game. IMRA §§ 1.1(a) & 1.5.

MLB.TV

6. MLBAM uses its out-of-market streaming rights to create and sell the first-of-its-kind league Internet streaming package, MLB.TV. MLB.TV was launched in 2002 to provide fans the ability to view Local Games of every club out of market through live Internet streaming.

7. MLBAM has invested [REDACTED] to create and/or obtain rights to technologies needed to produce and distribute MLB.TV, build its business infrastructure, and sell and manage subscriptions. (Summaries of some of these investments are at MLB0509113-9157, MLB0509158-9254 and MLB0509255-9483.). In addition to capital investment, hundreds of MLBAM staff/representatives work at MLBAM's headquarters in Lower Manhattan and elsewhere every day to continually innovate and improve MLB.TV for our fans.

8. MLBAM's continual innovation and devotion of substantial resources to MLB.TV has allowed MLBAM to create and provide to fans high-quality live streaming game video, the ability to view MLB.TV on literally hundreds of different devices (home computers, tablets, smart phones, etc.) across multiple platforms (Apple iOS, Google Android, etc.) within the U.S. and internationally, and multiple features that enhance the live viewing experience.

9. MLBAM provided MLB.TV through a 300K live stream to 30,000 viewers in August 2002, which itself represented a leading, innovative service to fans. MLBAM has since charted a trail of "firsts," such that MLB.TV is the most widely distributed sports streaming service,

covering nearly 30,000 games to millions of subscribers cumulatively since 2002. The significant mileposts for MLB.TV include: first to stream its entire season (2003); first to wire its venues for TV-quality streaming (2005); first to stream live 720p HD video (2009); first to stream live games/subscription product to iPhone (2009); first to stream live video on connected devices (2009); first to stream live games/subscription product to iPad (2010); first to stream live video to a gaming console (2010); first to embed live game streams on Facebook and Twitter (2011); and first to make a live video stream embeddable to any site on the Internet (2013).

10. Because of MLBAM's extensive (and continuing) investment and development in the MLB.TV out-of-market package, fans that would not otherwise have access to out-of-market game telecasts, whether over the Internet or at all, can now choose to watch virtually every out-of-market game of every club, *i.e.*, every Local Game, plus untelevised games that MLBAM streams (discussed below), plus a substantial number of nationally telecast games. All told, the MLB.TV service streams more than 2,300 regular season games domestically each year. Since MLB.TV's first full season in 2003, the number of MLB.TV subscribers has quadrupled.

11. MLBAM does not produce most of the live game telecasts that comprise MLB.TV. Rather, MLB.TV principally consists of the live Local Game telecasts produced by clubs' local telecast partners, typically regional sports networks ("RSNs"). Pursuant to MLB rules, those Local Game feeds are made available to MLBAM without the need to engage in individual negotiations with each telecaster (or club) with respect to fees or any other terms and conditions for the license. Local Game feeds are provided to MLBAM [REDACTED]

12. To the extent that, in rare instances, a club's telecast licensee (*e.g.*, an RSN) chooses not to telecast a game locally, live feeds of those games are created or obtained by MLBAM and included in the MLB.TV package. As such, virtually every game that is not exclusively licensed to a national network is made available through MLB.TV to out-of-market fans.

13. In 2014, the annual subscription price of MLB.TV (basic) is \$109.99 and the annual subscription price of the MLB.TV Premium service – the higher priced version of MLB.TV – is \$124.99, which works out to roughly \$.08 per OOM game for domestic subscribers.

14. Whether a fan purchases MLB.TV Premium or MLB.TV (basic), game video is HD quality, and additional features include in-game highlights and stats, live game DVR controls, full game video archives, picture in picture, split screen and quad screen viewing, pitch-by-pitch tracking widget, clickable line scores and a fantasy player tracker. MLB.TV Premium has additional features, including home and away telecast feeds, portable viewing on mobile devices and tablets through the popular MLB.com At Bat app, and viewing through Internet-connected devices including XBOX 360, XBOX One, Sony PlayStation, Apple TV, WD TV, Sony Blu-Ray, TiVo, Amazon Fire TV, and Roku.

15. All clubs are treated equally with respect to the distribution of revenues from MLB.TV.

16. MLBAM has been able to accomplish all of the foregoing and serve our fans so extraordinarily well because of the collective investment of the clubs and the league in MLBAM, the critical efficiencies produced by the internal cross-licenses and agreements of all clubs with respect to live video rights, and because, ultimately, MLBAM is able to leverage the fact that MLB.TV comprises the out-of-market games of *all* MLB clubs.

17. It is not factually plausible to presume that clubs, acting individually, could have achieved all that MLBAM has, acting for the clubs collectively, whether measured in terms of MLBAM's innovation, the incredible quality of the streaming products it provides to fans, the broad range of platforms on which fans can use those products, the prices at which MLBAM provides the products, the ability of MLBAM to offer virtually every out-of-market game to every consumer, or a host of other metrics. MLB.TV rests on technology that would not exist but for MLBAM's innovation and efforts, funded by the collective investment of the clubs as part of their collective agreement to create MLBAM to reach fans through the Internet and other interactive media. Such investment would not have made economic sense to stream game video to fans of just a single club. Similarly, clubs acting individually would have to negotiate with, and likely pay, their opposing clubs for the rights to stream games and could not leverage the

costs of a streaming product (operations, marketing, customer service, etc.) across the 30 club fan bases MLBAM services.

In-Market Streaming

18. My understanding is that Plaintiffs in this case are out-of-market fans challenging the way in which the clubs and the league exhibit out-of-market game video, and no plaintiff has expressed any interest in receiving in-market streaming. I understand that Plaintiffs have nonetheless raised certain questions concerning the topic of live streaming of games in market.

19. As noted above, IMRA permits MLBAM to stream games in market with club consent. MLBAM has actively pursued exercise of its in-market streaming rights. As a practical matter, MLBAM's discussions with clubs concerning potential in-market streaming have also involved club local telecast partners, who bargain for in-market exclusivity in their telecast rights agreements with clubs. Between 2008 and 2013, MLBAM reached agreement with YES Network to roll out in-market streaming of New York Yankees Local Games (with the consent of the Yankees), with Cox regarding in-market streaming of San Diego Padres Local Games (with the consent of the Padres), and with Rogers regarding in-market streaming of Toronto Blue Jays Local Games (with the consent of the Blue Jays) for certain seasons. MLBAM is continuing to discuss terms and conditions to stream games in-market for multiple clubs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 8, 2014 in New York, New York.



Robert Berman